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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,671	09/30/2003	William Kress Bodin	AUS920030245US1	6747

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EXAMINER

MANIWANG, JOSEPH R

ART UNIT	PAPER NUMBER
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2144

MAIL DATE	DELIVERY MODE
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06/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/675,671

Applicant(s)

BODIN ET AL.

Examiner

Joseph R. Maniwang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date 03/15/04.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees.

A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

2. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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3. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-24 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/675672 (U.S. Pat. App. Pub. 2005/0071463). Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant application claims subject matter covered by the claims of the copending application. For example, instant claim 1 is directed to receiving metrics and identifying a pattern in the metrics, and copending similarly claims receiving metrics (copending claim 1) and identifying a pattern within the metrics (copending claim 6). Other dependent claims of the instant application are also covered by copending application (compare present claim 2 and copending claim 2; present claim 5 and copending claim 1). In short, an ordinary artisan supplied with the specification and claims of the copending application would have been enabled using ordinary skill in the art to construct the invention as presently claimed.

5. Similarly, claims 1-24 are rejected in light of copending applications 10/692417 (U.S. Pat. App. Pub. 2005/0108405) and copending application 10/651724 (U.S. Pat. App. Pub. 2005/0050137)

6. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
9. Independent claims 1, 9, and 17 recite the limitation "the network". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Cho et al. (U.S. Pat. No. 7,160,252), hereinafter referred to as Cho.
12. Regarding claims 1, 9, and 17, Cho disclosed a method and system comprising receiving, within the network, a plurality of disparate user metrics (see column 3, lines 23-24; column 4, lines 60-67; column 6, lines 20-37; column 7, lines 1-23); saving the plurality of disparate user metrics (see column 10, lines

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26-36); identifying a subset of the saved disparate user metrics that comprises a user metric pattern (see column 3, lines 24-27, 39-41; column 5, lines 12-19; column 5, line 56 through column 6, line 8; column 6, lines 50-64; column 9, lines 11-26); and storing the subset of the saved disparate user metrics as a user metric pattern (see column 3, lines 27-32; column 5, lines 20-26).

13. Regarding claims 2, 10, and 18, Cho disclosed the method and system wherein receiving, within the network, a plurality of disparate user metrics comprises receiving a plurality of disparate user metrics from a metric sensor worn by the user (see column 3, lines 18-19; column 4, lines 57-60; column 9, lines 27-58).

14. Regarding claims 3, 11, and 19, Cho disclosed the method and system wherein identifying a subset of the saved disparate user metrics that comprises a user metric pattern comprises mining the saved disparate user metrics (see column 3, lines 24-27, 39-41; column 5, lines 12-19; column 5, line 56 through column 6, line 8; column 6, lines 50-64; column 9, lines 11-26).

15. Regarding claims 4, 12, and 20, Cho disclosed the method and system wherein storing the subset of the saved disparate user metrics as a metric pattern comprises creating a metric list; and associating the metric list with a user metric pattern data structure (see column 6, lines 1-8).

16. Regarding claims 5, 13, and 21, Cho disclosed the method and system comprising associating an action with the metric pattern (see column 5, lines 20-26; column 6, lines 9-19, 65-67).

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17. Regarding claims 6, 14, and 22, Cho disclosed the method and system wherein associating an action with the metric pattern comprises retrieving an action ID from an action database (see column 5, lines 20-26; column 6, lines 9-19, 65-67).

18. Regarding claims 7, 15, and 23, Cho disclosed the method and system comprising editing the subset of the saved disparate user metrics (see column 3, lines 27-32; column 5, lines 20-26).

19. Regarding claims 8, 16, and 24, Cho disclosed the method and system wherein editing the subset of the saved disparate user metrics comprises receiving an editing instruction from the user (see column 3, lines 27-32; column 5, lines 20-26).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Siegel et al. (U.S. Pat. App. Pub. 2003/0084305)

McKennan et al. (U.S. Pat. App. Pub. 2004/0176991)

Willner et al. (U.S. Pat. No. 6,701,271)

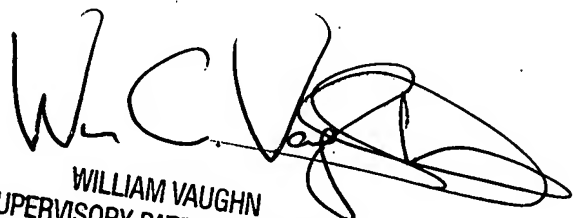
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph R. Maniwang whose telephone number is (571) 272-3928. The examiner can normally be reached on Mon-Fri 8:00-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William C. Vaughn can be reached on (571) 272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JM


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